IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Ex.FA.No. 22 of 2007()

AGAINST THE ORDER DATED 12/04/2007 IN EA 27/07 IN
EP.74/2000 of SUB COURT, SULTHAN BATHERY

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PETITIONER:

NORTH MALABAR DISTRICT CO-OPERATIVE
SUPPLY AND MARKETING SOCIETY LTD., NO.F.1003,
REPRESENTED BY GENERAL MANAGER, KOZHIKODE.

BY ADV. SMT.CELINE JOSEPH

RESPONDENTS: RESPONDENT:
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1. PAYYANNOR SERVICE CO-OPERATIVE BANK
LTD., NO.F.1401, REPRESENTED BY THE SECRETARY,
PAYYANNOOR AMSOM AND DESOM, KANNUR DISTRICT.

2. SHAIK AND COMPANY, MANAGING PARTNER,
SHAIK USMAN, C.K.HOUSE, KUPPADITHARA AMSOM,
P.O.MUNDAKKUTTI, VYTHIRI TALUK, WAYANAD DISTRICT.

R2 BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN
R1 BY ADV. SRI.M.SASINDRAN
SRI.GEORGE SEBASTIAN

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R. RAMAN & V.K.MOHANAN, JJ.

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Ex.F.A. No.22 of 2007

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Dated this the 30th day of October, 2007.

JUDGMENT

Raman, J.

This appeal is at the instance of the judgment debtor. The appellant being a co-operative society, for the amounts due and payable by it, there was an Arbitration Suit under Section 69 of the Co-operative Societies Act which was decreed in favour of the decree holder. There was an appeal therefrom, that was also dismissed and the award became final. Thereafter execution proceedings were initiated by the decree holder. The property belonging to the judgment debtor was brought to sale in public auction and purchased by the second respondent herein. According to the appellant, there is material irregularity and fraud in the matter of conducting the auction. According to the appellant, no notice under Order XXI Rule 66 was given and it did not contain the time, place and other requirements in the auction.

2. We have perused the records and find that notice under Order XXI Rule 66 was issued to the appellant and received by it and called upon him to be present in the court for settling the proclamation. It was thereafter

that the proclamation was settled fixing upset price of Rs.75 lakhs. The property consists of an extent of 45 cents of land with old buildings thereon. There were five participants in the auction and the same was sold for an amount of Rs.75,06,500/-. By an interim order passed by this court, in order to enable the appellant to prove the bonafides, we directed that the entire decree amount be deposited before the court below and adjourned the matter by giving one month's time as per our order dated 14.9.2007. Despite the order being given to the judgment debtor to pay off the entire amount by deposit, the judgment debtor miserably failed to avail the opportunity and to deposit the amount. The time was subsequently extended by one week. Still the appellant did not make the deposit. Since we thought that it will be appropriate to consider the contention on merits. On a perusal of the records produced, it would show that notice to the petitioner had been given. If the petitioner had any case that the property will fetch more amount than the proclaimed value, then necessarily petitioner should have raised such objection. But no such objection is

seen raised. Further, no materials are also placed in the present proceedings before the court below to show that the market price of the property will be much more than the price for which it is now sold. In the absence of any such materials, it cannot be said that the property will fetch more amount than the price for which it is sold. In this connection we may refer to the decision in SAHEB KHAN V. MOHD. YOUSUFUDDIN (2006) 4 SCC 476 wherein the apex court held that for setting aside the sale merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Even if the applicant had suffered substantial injury by reason of the sale, that would not be sufficient to set aside the sale unless substantial injury had been occasioned by a material irregularity or fraud in publishing or conducting the sale. A charge of fraud or material irregularity must be specifically pleaded and proved by sufficient materials. Mere bald allegations will not suffice proof of the same. In the factual situation we

find that the allegation of fraud and material irregularity is not substantiated by producing any materials to the satisfaction of the court below nor to this court. In the circumstances, we find no merit in this appeal. Accordingly the same is dismissed.

P.R.RAMAN
Judge

V.K.MOHANAN
Judge

pms